SUPREME COURT, U. S.

JUN 19 1974

MICHAEL RODAK, JR., CLERK

No. 73-1737

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1973

UNITED STATES OF AMERICA,
Appellant,
vs.
MICHIGAN NATIONAL CORPORATION,
et al,
Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF MICHIGAN

MOTION TO AFFIRM

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MOTION TO AFFIRM

Appellees move the Court to affirm the Order sought to be appealed on the grounds that it does not involve a final disposition of the merits of the action involved, does not in any way prejudice the rights of Appellant to a determination of the issues it seeks to raise in the litigation, and implements a statutory framework for an orderly and efficient accommodation of the administrative actions which are an essential predicate to the ripening of the issues sought to be determined in the judicial proceedings. We believe that Appellant seeks only assurance as to the procedural path which it should follow in the future; affirmance would give it that assurance.

RESTATEMENT OF QUESTION PRESENTED

Appellant brought three antitrust suits to enjoin consummation of four transactions after they had been approved by the Federal Reserve Board (hereinafter "Board") but before they had been acted on by the Comptroller of the Currency (hereinafter "Comptroller"). An essential part of each transaction is a merger requiring the prior approval of the Comptroller. The Bank Merger Act of 1966, 80 Stat. 8, as amended, 12 U.S.C. 1828(c), envisions that, in determining whether to bring suit to enjoin such a transaction, Appellant will be informed of the determination made by the Comptroller, and, to accomplish that purpose, the Act provides for a 30-day period following any approval by the Comptroller, during which the transaction may not be consummated and suit may be brought. Appellant concedes that "antitrust suits challenging a bank merger must be filed within 30 days *after* the Comptroller of the Currency approves a proposed merger." Jurisdictional Statement, p. 2. (Emphasis added.)

The question presented is whether the district court acted properly in entering an order dismissing antitrust suits brought prematurely by Appellant before action by the Comptroller, while assuring to Appellant the opportunity to reinstitute the suits within the time period contemplated by the Bank Merger Act, should the Comptroller approve the transactions.

RESTATEMENT OF THE CASE

Michigan National Bank ("MNB") is a national banking association headquartered in Lansing, Michigan. Restricted in its expansion potential and in its ability to serve new markets by state law which severely restricted branching outside a bank's home office city and which, at the time, prohibited bank holding companies, MNB, during the period 1955-1970, carried out a program under which it was instrumental in the establishment of several banks in other markets in the state. Substantial interests in

these new banks were acquired at the time of their formation by the employees profit sharing trust of the bank and by various of its officers, directors and major shareholders. In a few cases, similar relationships were established with small extant banks in other markets which needed, sought, and obtained management and financial assistance from MNB.

A change in state law made it possible for MNB to formalize these relationships through a bank holding company. On August 3, 1972, Michigan National Corporation received Federal Reserve Board approval to become a bank holding company and to acquire (via a tender offer) the shares of MNB and four of the closely related banks.[1] (58 *Federal Reserve Bulletin* 804 (1972)).

Michigan National then sought to bring into the holding company group four other banks, three of which it had assisted in establishing and with all of which it had long-standing and close relationships. In order to afford minority shareholders of the banks involved who might be dissatisfied with the prospect of holding company affiliation the opportunity to receive cash rather than holding company shares for their bank stock, it was decided that the acquisition should be accomplished through a merger — which gives that option to dissenting shareholders[2] rather than through a tender offer.

This transaction, which is a commonly employed one, envisions a three-step process under which (1) a new bank is chartered by the Comptroller of the Currency; (2) the new bank is acquired by the bank holding company, pursuant to approval by the Federal Reserve Board under section 3(a)(3) of the Bank Holding Company Act (12 U. S. C. 1842(a)(3)); (3) the existing bank is merged into the new bank, pursuant to approval granted (in the case

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[1] The four other banks which became subsidiaries of Michigan National Corporation pursuant to that Federal Reserve Board action were Michigan Bank, N. A., Detroit; Livonia National Bank, Livonia; Troy National Bank, Troy; and Oakland National Bank, Southfield.

[2] 12 U. S. C. §214a.

of a national bank) by the Comptroller of the Currency under the Bank Merger Act, 12 U. S. C. 1828(c), thus becoming a subsidiary of the bank holding company.[3]

Under this form of transaction, a competitive evaluation of the entire transaction is made both by the Federal Reserve Board[4] and by the Comptroller of the Currency. Applications must be filed for approval of both agencies, and each is required to deny approval if it finds that the transaction it is considering would violate Clayton Act stan-

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[3] Appellant, at page 5 of the Jurisdictional Statement (hereinafter cited as "J. S.") inaccurately describes the procedure by reversing steps 2 and 3. It is possible that Appellant's fundamental misconception of the procedure, by which it regards the merger as being between an existing bank and an interim bank, neither of which is at the time affiliated with a bank holding company, explains its failure to comprehend that it is by virtue of the merger that the existing bank becomes a subsidiary of the holding company, and that the Comptroller of the Currency's analysis of that merger must comprehend all of its competitive effects.

[4] Technically, what the Federal Reserve Board approves in these cases is the competitively neutral acquisition by the holding company of the non-operating "interim" bank. The Board has consistently advised us that it will look *through* the transaction it approves to the ultimate incorporation of an operating bank into the holding company system. We do not challenge their right to do so. Plainly, the approval of both agencies is a prerequisite to consummation of an acquisition of this sort. Equally plainly, however, no event of competitive significance *can* occur in such a transaction until the merger has been approved, the statutory waiting period has passed and the merger is consummated, events subsequent in time to Board action. As was found by the court below, and not disputed by the Appellant herein, approval by the Board of an acquisition of an interim bank cannot be translated into authority to make a tender offer (and thus bypass the supervisory agency) without there being, first, an application to the Board; approval of the new application and a restart of the statutory waiting period.

dards, unless it finds such anticompetitive effects to be clearly outweighed in the public interest by the probable effect of the transaction in meeting the convenience and needs of the community to be served. And, in the event of approval, both the Bank Holding Company Act and the Bank Merger Act require that the agency involved immediately notify the Attorney General; both also require that the transaction not be consummated before the thirtieth calendar day after the date of approval, and that any antitrust suit arising out of such transaction be brought within that period.

The statutory scheme obviously contemplates that the bank agency charged with approval or denial of the affiliation will have the benefit of the competitive judgment of its sister agencies and the Department of Justice, and if it approves, that the Department of Justice, in determining whether to proceed in the courts against a bank acquisition or merger, will have the benefit of the views which may be expressed by the banking agency in its action. In short, a dialogue between the agencies was contemplated by the drafters of the statutes. While the 30-day period provides a statute of limitations after which the Department may not bring suit, it also removes any necessity for the Department to bring suit prior to agency action by maintaining the status quo for a period after such action. Its purpose in doing so, as is evident from the Senate Committee Report on the Bank Merger Act Amendments of 1966, was to permit careful consideration by the Department of Justice of the action of the federal agencies in which Congress had vested primary responsibility for approval or disapproval.

> "The committee recognized that the bill places in the hands of the Justice Department a considerable measure of authority which the committee expects will be used with care and discretion. The committee is aware that many banks proposing to merge under an approval by the Federal banking authorities might feel compelled to abandon their merger plans at the mere threat of a suit by the Justice Department, however insubstantial the basis for such a suit might be. The opportunity afforded to the Justice Department

> by the 30-day waiting period must be used with a full understanding and appreciation of the special circumstances applicable to the field of banking and with due consideration for the authority vested by the Congress in the Federal banking authorities to approve or disapprove mergers on the basis of their expert knowledge of the banking field and the judgment on which they base their decision that a merger is in the public interest." (S. Rep. 299, 89th Cong., 1st Sess., p. 8.)

In this case, the Department of Justice had the opportunity, through written comments, to convince the Federal Reserve Board or the Comptroller of the Currency of the merits of its position and, upon being successful with either, to block the transaction without litigation. It failed to persuade the Federal Reserve Board and, upon such failure, immediately brought suit without awaiting a decision of the Comptroller. This precipitous action placed the defendants in the position of having to prepare to defend, in an antitrust action, transactions which they did not have regulatory approval to consummate. By suing before the regulatory agency which supervises the day-to-day activities of the banks in question had addressed itself to the competitive and banking factors, the Department of Justice precipitated litigation which the full and fair exchange of opinions and factual data contemplated by the statutory scheme might have obviated.[5] Moreover, it placed upon the district court the burden of supervising at least the initial phases of a complex litigation which might shortly be mooted by administrative action.

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[5] The Department of Justice will surely not claim that it is the sole repository of all facts which bear upon the competitive factors which it must measure in assessing whether to bring suit. Nor, we are sure, would it bring suit on competitive grounds if it was reasonably sure that those competitive factors were outweighed in the public interest by banking factors, the existence of which is peculiarly in the province of the supervisory agency. Its judgment would be by-passed under the procedure which Justice urges.

It was because of these circumstances that Appellees moved, and the district court ordered, that the action be dismissed. In moving, Appellees committed that, should the Department of Justice, within 30 days after favorable action by the Comptroller of the Currency, initiate suit seeking the same relief as was sought in the then pending litigation, they would not question the timeliness of such suit. The Court also concluded (a conclusion which is not disputed by Appellant and is endorsed by Appellees) that the Federal Reserve Board's order does not authorize acquisitions by Michigan National Corporation other than through the mergers which the Comptroller has yet to approve, and that there is therefore no risk that the four banks involved in the suits might, based on that approval, lawfully become subsidiaries of the holding company through some other transaction. Indeed, the Comptroller acted to approve two of the proposed mergers involving Central Bank, N.A. and Valley National Bank of Saginaw on May 16, 1974.[6] The Department of Justice, within the thirty day waiting period contemplated by the statute brought suit against those approvals before the appropriate District Court (C No. 4-71882 and C No. 4-71883, June 13, 1974, E.D. Mich. attached hereto as Appendix "A."). We suppose that these filings moot these appeals, pro tanto. They also, we believe, point up the lack of substance in the rationale for these appeals.

ARGUMENT

Appellant now apparently recognizes that the litigation is premature, at least in the sense that further judicial proceedings at this time would be pointless. It phrases the question presented as "whether the district court should have stayed the proceedings until the Comptroller acts, instead of dismissing. . . ." (J. S., p. 2) Even this is more

[6] The remaining mergers have not yet been acted on by shareholders of the merging banks. The Comptroller does not act upon a merger until after shareholder approval.

of a concession than it was prepared to make at the district court level, where its brief in opposition to the motion to dismiss, while stating that "defendants are in any event entitled to no more than a stay", concluded that to grant such a stay "seems entirely unnecessary under the circumstances." (p. 8) The present concession focuses the question as a choice between (1) permitting an action to be filed and remain in a state of dormancy for an undetermined period of time, after which it would presumably be voluntarily dismissed in the event the Comptroller should deny approval to the merger or its continuation evaluated in the light of the analysis on which he bases an approval;[7] or (2) requiring that the action be filed only at such time as its diligent prosecution is appropriate.

Carnation Co. v. *Pacific Westbound Conference*, 383 U. S. 213 (1966), cited by Appellant for the proposition that the first alternative is the proper one, does not support its claim. That case involved the dismissal of a treble damage action, which might well have been barred by the applicable statute of limitations if its filing were required to await final administrative action. In the present case, the right of Appellant to obtain the relief it seeks, through suit brought after agency action, is assured by the same statute which requires that it await that action. This case therefore more properly falls within that class of cases exemplified by *Far East Conference* v. *United States*, 342 U. S. 570 (1952), distinguished in *Carnation* as cases in which dismissal is appropriate because such action "would not prejudice the plaintiff's right to obtain antitrust relief at the appropriate time." 383 U. S. at 222-23. In the *Far East* opinion, the Court's analysis of the very question presented here was as follows:

> "Having concluded that initial submission to the Federal Maritime Board is required, we may either order the case retained on the District Court docket pending

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[7] We question whether, suit having once been filed, the Department of Justice could be expected to give proper weight to factors raised by the Comptroller which bear on the appropriateness of such litigation.

> the Board's action . . . or order dismissal of the proceeding brought in the District Court. . . . We believe that no purpose will here be served to hold the present action in abeyance in the District Court while the proceeding before the Board and subsequent judicial review or enforcement of its order are being pursued. A similar suit is easily initiated later, if appropriate." 342 U. S. 570, 576-77.

No different conclusion is called for here.

Appellant suggests that the question of when initiation of suit is timely must be resolved with certainty, lest it risk dismissal on statute of limitations grounds either upon reinstitution of the subject actions or in some future suit because of disagreement of this court or another court with the position taken by the district court herein. Appellees have attempted, in these actions, to provide that assurance, as has the district court. Whatever further certitude may be necessary can be provided by this Court's affirmance of the district court action, thus indicating its agreement that suit brought after favorable action by the Comptroller, within the statutory period provided in the Bank Merger Act, would be timely. To take the position suggested by Appellant would be a waste of scarce judicial resources, implying that, in every case of this kind requiring multiple banking authority approvals, suit must be filed after receipt of the first, necessitating, at the least, a motion by the defendant for a stay of the proceedings until receipt of the last. It seems clear that the course to be preferred — the one most consistent with the statutory scheme and with judicial economy and accommodation of the administrative processes — is to conclude that suit against a transaction requiring multiple bank regulatory approvals is timely and appropriate within the 30-day period following receipt of the last of such required approvals, and not prior thereto.

CONCLUSION

The judgment of the District Court should be summarily affirmed, with such brief statement as the Court may deem necessary to assure that its action is interpreted as affording Appellant the opportunity to litigate the merits of any of the subject transactions, upon the filing of an action within thirty days after receipt of the last bank regulatory approval required with respect thereto.

Respectfully submitted,

EVERETT R. TREBILCOCK

RONALD R. PENTECOST

Attorneys for Appellees

June 14, 1974

APPENDIX "A"

COMPLAINT
(Filed June 13, 1974)

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

United States of America,
Plaintiff,
v. Civil Action No. 4-71882

Michigan National Corporation, Michigan National Bank, Valley National Bank of Saginaw and V. National Bank,
Defendants.

The United States of America, plaintiff, by its attorneys, acting under the direction of the Attorney General of the United States, brings this civil action to obtain equitable relief against the above-named defendants and complains and alleges as follows:

I
JURISDICTION AND VENUE

1. This complaint is filed and this action is instituted under Section 15 of the Act of Congress of October 15, 1914 (15 U.S.C. §25), as amended, commonly known as the Clayton Act, in order to prevent and restrain the violation by the defendants, as hereinafter alleged, of Section 7 of the Clayton Act (15 U.S.C. §18), as amended.

2. Michigan National Corporation, Michigan National Bank, Valley National Bank of Saginaw and V. National Bank transact business, maintain offices and may be found within the Eastern District of Michigan.

II

THE DEFENDANTS

3. Michigan National Corporation is made a defendant herein. Michigan National Corporation is a multibank holding corporation organized under the laws of the State of Delaware with its principal place of business in Bloomfield Hills, Oakland County, Michigan.

4. Michigan National Bank (hereinafter referred to as "Michigan National") is made a defendant herein. Michigan National is a subsidiary of Michigan National Corporation and a national banking association organized under the laws of the United States with its principal place of business in Lansing, Ingham County, Michigan.

5. Valley National Bank of Saginaw (hereinafter referred to as "Valley National Bank") is made a defendant herein. Valley National Bank is a national banking association organized under the laws of the United States with its principal place of business in Saginaw, Saginaw County, Michigan.

6. V. National Bank (hereinafter referred to as "V. Bank") is made a defendant herein. V. Bank is a national banking association, newly organized under the laws of the United States with its principal place of business in Saginaw, Saginaw County, Michigan. V. Bank is a nonoperating institution, organized solely to merge with Valley National Bank.

7. Michigan National Bank, Valley National Bank and Michigan National Corporation, through its subsidiary banks, are engaged in commercial banking.

III

TRADE AND COMMERCE

8. Commercial banks provide a combination of financial services unduplicated by other institutions. Among these services are the acceptance of deposits for safekeeping and convenience in making payments by check, the granting of loans to individuals and businesses, the renting of safety deposit boxes, the sale of cashier's checks and the collection of drafts, bills and other commercial instruments. Demand deposits are a unique function of commercial banks and fill an essential role in the national economy by creating net additions to the nation's supply of money.

9. Michigan National Corporation is the third largest commercial banking organization in the State of Michigan. As of December 30, 1972, its five subsidiary banks had total assets of $2.67 billion, total deposits of $2.38 billion, total loans and discounts of $1.75 billion and controlled 9.5 percent of all commercial bank deposits in the State of Michigan.

10. Michigan National was organized in 1934 and is Michigan National Corporation's "lead" bank. It operates a branch office in Saginaw, in the Saginaw Standard Metropolitan Statistical Area ("SMSA") and 28 additional offices elsewhere in the State of Michigan. As of December 30, 1972, Michigan National had total assets of $1.44 billion, total deposits of $1.29 billion, total loans and discounts of $921.4 million and was the fourth largest bank in the State of Michigan, the largest bank outside the Detroit metropolitan area, and the 55th largest bank in the United States.

11. Valley National Bank was chartered in 1959. It operates its headquarters office in Saginaw, three branch offices in the Saginaw SMSA and an additional branch in Bangor Township, Bay County, Michigan. As of December 30, 1972, Valley National Bank had total assets of $49.3 million, total deposits of $43.2 million, and total loans and discounts of $29.0 million.

12. Commercial banking in the Saginaw SMSA is highly concentrated. As of June 30, 1972, the four largest commercial banking organizations in the Saginaw SMSA controlled 87.0 percent of total SMSA commercial bank deposits.

13. Michigan National Corporation, through its subsidiary Michigan National, and Valley National Bank, engage in substantial competition in commercial banking in the City of Saginaw and throughout the Saginaw SMSA. Michigan National is the second largest bank in the Saginaw SMSA. Valley National Bank is the fourth largest commercial bank in the Saginaw SMSA.

14. As of June 30, 1972, Michigan National held 25.9 percent of commercial bank deposits in the Saginaw SMSA and Valley National Bank held 6.4 percent of such deposits, for a combined total of 32.3 percent.

15. Michigan National Corporation, Michigan National and Valley National Bank have regularly utilized interstate communications, including the mails, telephone and telegraph, to conduct business with customers and with other banks located in states other than Michigan. Customers of Michigan National Corporation, Michigan National and Valley National Bank have regularly utilized interstate communications, including the mails, telephone and telegraph, to conduct business with, apply for, and obtain the services provided by defendants. Michigan National Corporation, Michigan National and Valley National Bank are engaged in interstate commerce.

IV

VIOLATION ALLEGED

16. Defendants have entered into agreements which, if consummated, will result in the acquisition by Michigan National Corporation of 100 percent (less directors' qualifying shares) of the stock of the successor to the merger of Valley National Bank and V. Bank.

17. Sometime prior to March 1973 V. Bank was created to facilitate the acquisition of Valley National Bank by

Michigan National Corporation. In March 1973 Michigan National Corporation applied to the Board of Governors of the Federal Reserve System for approval to acquire the successor to the merger of Valley National Bank and V. Bank. On October 18, 1973 the Board of Governors of the Federal Reserve System issued an order approving the proposed acquisition. On May 16, 1974 the Comptroller of the Currency issued an order approving the merger of Valley National Bank and V. Bank.

18. The effect of the aforesaid merger of Valley National Bank and V. Bank and the acquisition of the successor of that merger by Michigan National Corporation may be substantially to lessen competition or to tend to create a monopoly in the aforesaid interstate trade and commerce in violation of Section 7 of the Clayton Act in the following ways, among others:

(a) existing competition and the potential for increased competition between Michigan National and Valley National Bank in commercial banking will be eliminated;

(b) concentration in commercial banking in the Saginaw SMSA and portions thereof, including the City of Saginaw, will be substantially increased; and

(c) competition generally in commercial banking in the Saginaw SMSA and portions thereof, including the City of Saginaw, may be substantially lessened.

PRAYER

WHEREFORE, plaintiff prays:

1. That the merger and acquisition of the successor of that merger described in paragraph 16 of this complaint be adjudged to be a violation of Section 7 of the Clayton Act.

2. That defendants and all persons acting on their behalf be enjoined from carrying out the aforesaid merger and acquisition agreements or any similar plan or agreement the effect of which would be to merge, consolidate, or

in any other way combine the businesses of said defendants.

3. That the plaintiff have such other and further relief as the Court may deem just and proper.

4. That the plaintiff recover the costs of this action.

(s) Wm. B. Saxbe
Attorney General

(s) Thomas E. Kauper
Assistant Attorney General

(s) Baddia J. Rashid

(s) Hugh P. Morrison, Jr.
Attorneys, Department of Justice

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United States Attorney

(s) Jules M. Fried

(s) L. Peter Farkas

(s) Peter E. Halle
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Department of Justice
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COMPLAINT
(Filed June 13, 1974)

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

United States of America,
Plaintiff,
v. Civil Action No. 4-71883

Michigan National Corporation, Michigan National Bank, Central Bank, N.A. and C. Bank, National Association,
Defendants.

The United States of America, plaintiff, by its attorneys, acting under the direction of the Attorney General of the United States, brings this civil action to obtain equitable relief against the above-named defendants and complains and alleges as follows:

I
JURISDICTION AND VENUE

1. This complaint is filed and this action is instituted under Section 15 of the Act of Congress of October 15, 1914 (15 U.S.C. §25), as amended, commonly known as the Clayton Act, in order to prevent and restrain the violation by the defendants, as hereinafter alleged, of Section 7 of the Clayton Act (15 U.S.C. §18), as amended.

2. Michigan National Corporation and Michigan National Bank transact business, maintain offices and may be found within the Eastern District of Michigan.

II

THE DEFENDANTS

3. Michigan National Corporation is made a defendant herein. Michigan National Corporation is a multibank holding corporation organized under the laws of the State of Delaware with its principal place of business in Bloomfield Hills, Oakland County, Michigan.

4. Michigan National Bank (hereinafter referred to as "Michigan National") is made a defendant herein. Michigan National is a subsidiary of Michigan National Corporation and a national banking association organized under the laws of the United States with its principal place of business in Lansing, Ingham County, Michigan.

5. Central Bank, N.A. (hereinafter referred to as "Central Bank") is made a defendant herein. Central Bank is a national banking association organized under the laws of the United States with its principal place of business in Grand Rapids, Kent County, Michigan.

6. C. Bank, National Association (hereinafter referred to as "C. Bank") is made a defendant herein. C. Bank is a national banking association, newly organized under the laws of the United States with its principal place of business in Grand Rapids, Kent County, Michigan. C. Bank is a non-operating institution, organized solely to merge with Central Bank.

7. Michigan National Bank, Central Bank and Michigan National Corporation, through its subsidiary banks, are engaged in commercial banking.

III

TRADE AND COMMERCE

8. Commercial banks provide a combination of financial services unduplicated by other institutions. Among these services are the acceptance of deposits for safekeeping and convenience in making payments by check, the granting of loans to individuals and businesses, the renting of safety deposit boxes, the sale of cashier's checks and the collection of drafts, bills and other commercial instruments. De-

mand deposits are a unique function of commercial banks and fill an essential role in the national economy by creating net additions to the nation's supply of money.

9. Michigan National Corporation is the third largest commercial banking organization in the State of Michigan. As of December 30, 1972, its five subsidiary banks had total assets of $2.67 billion, total deposits of $2.38 billion, total loans and discounts of $1.75 billion and controlled 9.5 percent of all commercial bank deposits in the State of Michigan.

10. Michigan National was organized in 1934 and is Michigan National Corporation's "lead" bank. It operates a branch office in Grand Rapids, Kent County, Michigan, in the Grand Rapids Standard Metropolitan Statistical Area ("SMSA") and 28 additional offices elsewhere in the State of Michigan. As of December 30, 1972, Michigan National had total assets of $1.44 billion, total deposits of $1.29 billion, total loans and discounts of $921.4 million and was the fourth largest bank in the State of Michigan, the largest bank outside the Detroit metropolitan area, and the 55th largest bank in the United States.

11. Central Bank was organized in 1934. It operates its headquarters office and eight branch offices in Grand Rapids and Kentwood, Kent County, Michigan, in the Grand Rapids SMSA. As of December 30, 1972, Central Bank had total assets of $49.0 million, total deposits of $42.9 million, and total loans and discounts of $27.9 million.

12. Commercial banking in Kent County and in the Grand Rapids SMSA is highly concentrated. As of June 30, 1972, the four largest commercial banking organizations in Kent County controlled 92.5 percent of total county commercial bank deposits and the four largest commercial banking organizations in the Grand Rapids SMSA controlled 79.6 percent of total SMSA commercial bank deposits.

13. Michigan National Corporation, through its subsidiary Michigan National, and Central Bank engage in substantial competition in commercial banking in Kent County and throughout the Grand Rapids SMSA. Michigan National is the third largest bank in Kent County and

in the Grand Rapids SMSA. Central Bank is the fourth largest commercial bank in Kent County and the seventh largest in the Grand Rapids SMSA.

14. As of June 30, 1972, Michigan National held 17.7 percent of commercial bank deposits in Kent County, and Central Bank held 3.2 percent, for a combined total of 20.9 percent. As of June 30, 1972, Michigan National held 14.6 percent of commercial bank deposits in the Grand Rapids SMSA and Central Bank held 2.6 percent of such deposits, for a combined total of 17.2 percent.

15. Michigan National Corporation, Michigan National and Central Bank have regularly utilized interstate communications, including the mails, telephone and telegraph, to conduct business with customers and with other banks located in states other than Michigan. Customers of Michigan National Corporation, Michigan National and Central Bank have regularly utilized interstate communications, including mails, telephone and telegraph, to conduct business with, apply for, and obtain the services provided by defendants. Michigan National Corporation, Michigan National and Central Bank are engaged in interstate commerce.

IV

VIOLATION ALLEGED

16. Defendants have entered into agreements which, if consummated, will result in the acquisition by Michigan National Corporation of 100 percent (less directors' qualifying shares) of the stock of the successor to the merger of Central Bank and C. Bank.

17. Sometime prior to March 1973 C. Bank was created to facilitate the acquisition of Central Bank by Michigan National Corporation. In March 1973 Michigan National Corporation applied to the Board of Governors of the Federal Reserve System for approval to acquire the successor to the merger of Central Bank and C. Bank. On October 18, 1973 the Board of Governors of the Federal Reserve System issued an order approving the proposed acquisition. On May 16, 1974 the Comptroller of the Currency

issued an order approving the merger of Central Bank and C. Bank.

18. The effect of the aforesaid merger of Central Bank and C. Bank and the acquisition of the successor of that merger by Michigan National Corporation may be substantially to lessen competition or to tend to create a monopoly in the aforesaid interstate trade and commerce in violation of Section 7 of the Clayton Act in the following ways, among others:

(a) existing competition and the potential for increased competition between Michigan National and Central Bank in commercial banking will be eliminated;

(b) concentration in commercial banking in the Grand Rapids SMSA and portions thereof, including Kent County, will be substantially increased;

(c) competition generally in commercial banking in the Grand Rapids SMSA and portions thereof, including Kent County, may be substantially lessened.

PRAYER

WHEREFORE, plaintiff prays:

1. That the merger and acquisition of the successor of that merger described in paragraph 16 of this complaint be adjudged to be a violation of Section of the Clayton Act.

2. That pursuant to Section 15 of the Clayton Act the Court order summons to be issued to Central Bank, N.A. and C. Bank, National Association, commanding them to appear and answer the allegations contained in this complaint, and to abide by and perform such orders and decrees as this Court may make in the premises.

3. That defendants and all persons acting on their behalf be enjoined from carrying out the aforesaid merger and acquisition agreements or any similar plans or agreements the effect of which would be to merge, consolidate, or in any way combine the businesses of said defendants.

4. That the plaintiff have such other and further relief as the Court may deem just and proper.

5. That the plaintiff recover the cost of this action.

(s) Wm. B. Saxbe
Attorney General

(s) Thomas E. Kauper
Assistant Attorney General

(s) Baddia J. Rashid

(s) Hugh P. Morrison, Jr.
Attorneys, Department of Justice

.....
United States Attorney

(s) Jules M. Fried

(s) L. Peter Farkas

(s) Peter E. Halle
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